



## 2009 ASSEMBLY BILL 849

March 12, 2010 - Introduced by Representative BLACK. Referred to Committee on Natural Resources.

1     **AN ACT** *to amend* 814.245 (2) (d); and *to create* 18.13 (4g), 165.07, 165.075 and  
2           165.076 of the statutes; **relating to:** creating a public intervenor in the  
3           Department of Justice and making an appropriation.

---

### *Analysis by the Legislative Reference Bureau*

This bill requires the attorney general to appoint an assistant attorney general to serve as the public intervenor. The bill authorizes the public intervenor to formally commence or intervene in proceedings before any court whenever intervention is necessary to protect the public rights in water and other natural resources of this state and requires the public intervenor to intervene in those matters when requested to do so by a division administrator in the Department of Natural Resources (DNR).

The bill authorizes the public intervenor to act as an interested party in actions in which he or she intervenes, with the power to present evidence, subpoena witnesses, cross-examine witnesses, file briefs, and do any other acts appropriate for a party to the proceedings.

The bill also authorizes the public intervenor to appeal administrative rulings to the courts.

The bill requires DNR personnel to notify the public intervenor of all administrative proceedings under the environmental protection chapters and to make investigations, studies, and reports to assist the public intervenor either before or during any formal intervention.

The bill also requires the attorney general to appoint a Public Intervenor Advisory Council consisting of seven to nine members who have backgrounds in or

**ASSEMBLY BILL 849**

demonstrated experience or records relating to environmental protection or natural resource conservation. In addition, at least one member must have working knowledge of business and at least one member must have working knowledge of agriculture. The advisory council must hold open, publicized meetings and must advise the public intervenor consistent with his or her duties.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 18.13 (4g) of the statutes is created to read:

2           18.13 **(4g)** PUBLIC INTERVENOR. Notwithstanding s. 165.075, the public  
3 intervenor may not initiate any action or proceeding concerning the issuance of  
4 obligations by the building commission under this chapter.

5           **SECTION 2.** 165.07 of the statutes is created to read:

6           **165.07 Assistant attorney general — public intervenor.** (1) The attorney  
7 general shall designate an assistant attorney general on the attorney general's staff  
8 as public intervenor. The head of each agency responsible for proceedings under chs.  
9 30, 31, and 281 to 299, shall give notice of those proceedings to the public intervenor,  
10 to the administrators of divisions primarily assigned the departmental functions  
11 under chs. 29 and 281 to 299, and to the natural areas preservation council.

12           (2) The public intervenor shall formally intervene in proceedings described in  
13 sub. (1) when requested to do so by an administrator of a division primarily assigned  
14 the departmental functions under chs. 29 or 281 to 299. The public intervenor may,  
15 on the public intervenor's own initiative or upon request of any committee of the  
16 legislature, formally intervene in proceedings described in sub. (1) whenever that  
17 intervention is needed for the protection of public rights in water and other natural  
18 resources, as provided in chs. 30 and 31 and defined by the supreme court.

**ASSEMBLY BILL 849**

1           **(3)** Personnel of the department of natural resources shall, upon the request  
2 of the public intervenor, make any investigations, studies, and reports that the public  
3 intervenor requests in connection with proceedings described in sub. (1), either  
4 before or after formal intervention. Personnel of state agencies shall, at the public  
5 intervenor's request, provide information, serve as witnesses in proceedings  
6 described in sub. (1), and otherwise cooperate in carrying out the public intervenor's  
7 intervention functions. The public intervenor shall formally intervene by filing a  
8 statement to that effect with the examiner or other person immediately in charge of  
9 the proceeding. Upon that filing, the public intervenor shall be considered a party  
10 in interest with full power to present evidence, subpoena and cross-examine  
11 witnesses, submit proof, file briefs, or do any other acts appropriate for a party to the  
12 proceedings.

13           **(4)** The public intervenor may appeal from administrative rulings to the courts.  
14 In all administrative proceedings and judicial review proceedings, the public  
15 intervenor shall be identified as "public intervenor." This section does not preclude  
16 or prevent any division of the department of natural resources, or any other  
17 department or independent agency, from appearing by its staff as a party in any  
18 proceedings.

19           **SECTION 3.** 165.075 of the statutes is created to read:

20           **165.075 Assistant attorney general; public intervenor; authority.** In  
21 carrying out his or her duty to protect public rights in water and other natural  
22 resources, the public intervenor may initiate actions and proceedings before any  
23 agency or court in order to raise issues, including issues concerning constitutionality,  
24 present evidence and testimony, and make arguments.

25           **SECTION 4.** 165.076 of the statutes is created to read:

**ASSEMBLY BILL 849**

1           **165.076 Assistant attorney general; public intervenor; advisory**  
2 **council.** The attorney general shall appoint a public intervenor advisory council  
3 under s. 15.04 (1) (c). The public intervenor advisory council shall consist of not less  
4 than 7 nor more than 9 members. The attorney general may only appoint members  
5 who have backgrounds in or demonstrated experience or records relating to  
6 environmental protection or natural resource conservation. The attorney general  
7 shall appoint at least one member who has working knowledge in business and at  
8 least one member who has working knowledge in agriculture. The public intervenor  
9 advisory council shall advise the public intervenor consistent with his or her duty to  
10 protect public rights in water and other natural resources. The public intervenor  
11 advisory council shall conduct meetings consistent with subch. V of ch. 19 and shall  
12 permit public participation and public comment on public intervenor activities.

13           **SECTION 5.** 814.245 (2) (d) of the statutes is amended to read:

14           814.245 (2) (d) “State agency” does not include the public intervenor or citizens  
15 utility board.

16           **SECTION 6. Fiscal change.**

17           (1) In the schedule under section 20.005 (3) of the statutes for the appropriation  
18 to the department of justice under section 20.455 (1) (a) of the statutes, as affected  
19 by the acts of 2009, the dollar amount is increased by \$123,400 for the second fiscal  
20 year of the fiscal biennium in which this subsection takes effect to increase the  
21 authorized FTE positions for the department by 1.0 GPR attorney position and 1.0  
22 legal secretary position for the public intervenor and for related costs.

23           **SECTION 7. Effective date.**

**ASSEMBLY BILL 849**

1 (1) This act takes effect on July 1, 2010, or on the day after publication,  
2 whichever is later.

3 (END)